

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding the  
Implementation of the Suspension of Direct  
Access Pursuant to Assembly Bill 1X and  
Decision 01-09-060.

Rulemaking 02-01-011  
(Filed January 9, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING MUNICIPAL DEPARTING LOAD ISSUES**

This ruling sets forth the procedural plan to resolve outstanding Municipal Departing Load (MDL) Cost Responsibility Surcharge (CRS) issues relating to three areas, namely: (1) eligibility criteria for granting CRS exceptions to existing publicly owned utilities (POUs) as prescribed in Decision (D.) 03-07-028;<sup>1</sup> (2) the limited rehearing of D.03-07-028;<sup>2</sup> and (3) the Petition for Modification of D.03-07-028 filed by the California Municipal Utilities Association (CMUA).

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<sup>1</sup> D.03-07-028 determined that a limited CRS exception should apply to new load of existing publicly owned utilities, and that the assigned Administrative Law Judge (ALJ) should develop a record to clarify the definition of "existing publicly owned utility."

<sup>2</sup> The scope of the limited rehearing was set forth in D.03-08-076. Parties were provided an opportunity to file comments concerning the issues subject to the limited rehearing pursuant to an ALJ Ruling issued on October 20, 2003. In its application in a separate proceeding (A.04-07-032), Pacific Gas and Electric Company (PG&E) makes the statement that this proceeding should determine the extent to which "Dedicated Rate Component" (DRC) charges are recoverable from new municipal load, and that this issue should be "dealt with in conjunction with" the rehearing granted in D.03-08-086. Senate Bill 772 states that the Commission shall determine the extent to which DRC charges are recoverable from new municipal load, consistent with the Commission's determination in the limited rehearing granted in D.03-08-076. This proceeding shall resolve the rehearing within the scope defined by D.03-08-076. Determination of the applicability of the rehearing to the disposition of DRC charges relating to new municipal load, however, is beyond the scope of this proceeding.

Because of their interrelated nature, the intent is to deal with all these matters on a concurrent basis and in a single Commission decision. Responsive pleadings on each of these three issues have been filed by parties, and reviewed. The filed pleadings, together with attachments thereto, shall be part of the record. It is concluded that the pleadings, including attachments thereto, are sufficient for the Commission to render a decision on each of these issues, except as noted below. Specifically, limited evidentiary hearings are warranted on certain issues relating to the load forecasts provided to the Department of Water Resources (DWR) and used by DWR in its procurement. These issues were raised in connection with both the rehearing phase and the CMUA Petition to Modification.

### **Need for Further Evidentiary Hearings**

#### **Parties' Positions**

Parties disagree concerning the need for further evidentiary hearings. Certain parties representing MDL interests requested that evidentiary hearings be held. The three investor-owned utilities argue that no further hearings are necessary.

Northern California Power Agency (NCPA) seeks evidentiary hearings, but doesn't identify specific disputed factual issues. NCPA generally argues that publicly owned utilities require more information from Pacific Gas and Electric Company (PG&E) both about the load forecasts provided to DWR, and the methodologies behind those forecasts.

The City of Industry (Industry) also seeks evidentiary hearings, arguing the record is incomplete as to what information was used in developing DWR forecasts and what information "should have been provided" to DWR. Thus, Industry seeks to expand the scope of the proceeding to consider treating the utilities' alleged failures as a prudency issue.

CMUA believes evidentiary hearings may be necessary, in particular, to address the veracity of “new factual representations” specifically by PG&E regarding its load forecasts provided to DWR. PG&E originally asserted that its sales forecast was not provided to DWR until June 2001—after DWR had contracted for the bulk of its power purchases. In view of the lack of evidence as to any specific load adjustment in load forecasts for MDL, the Commission, in D. 03-07-028, did not adopt a CRS exclusion for MDL customers.

CMUA claims that PG&E has subsequently admitted, however, that its February 1, 2001 load forecast provided to DWR did, in fact, include specific and quantifiable amounts of MDL based on PG&E’s August 2000 “Bypass Report” (Bypass Report). The new information alleged by CMUA involves separate statements made by DWR and PG&E. First, in a memorandum from DWR, dated September 26, 2003, attached to an October 20, 2003 ALJ ruling, in reference to the rehearing of D.03-07-028, DWR stated:

“On February 14, 2001, DWR started to use 10-year forecasts provided by Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE).”

As indicated in comments filed December 2, 2003, in response to the October 20, 2003, ALJ ruling, PG&E asked DWR to produce the 10-year forecast referenced in its September 26, 2003 memorandum. In its data response (attached to PG&E’s comments), DWR stated that the forecast received from PG&E on February 14, 2001 actually consisted of only three years of data (for 2001-03), and that DWR independently extended the forecast to a 10-year period by taking the three-year forecast (2001-03) using PG&E FERC Form 1 data. In its December 2, 2003 comments, PG&E agrees that the 2001-03 sales forecast reflected “a bypass forecast prepared by PG&E Witness Keane in August 2000.”

CMUA thus claims that PG&E's statements concerning the three-year forecast conflict with PG&E's claim that that it supplied no load forecast to DWR earlier than June 2001. CMUA asks that this issue be considered in the rehearing phase of this proceeding. In the alternative, CMUA requested leave to file a Petition for Modification to address PG&E's "new admissions." Before Commission action was taken on its request, CMUA filed a Petition for Modification of D. 03-07-028 on February 17, 2004, raising the same allegations concerning PG&E load forecasts provided to DWR.

In its opposition to CMUA's Petition to Modify, filed March 18, 2004, PG&E denies admitting that its August 2000 Bypass Report was provided to DWR in February 2001. PG&E claims that it has no record of sending DWR *any* forecast in February of 2001. In its March 18, 2004, response, PG&E did attach an email printout indicating that it provided at least a one-year 2001 forecast to DWR at the end of March 2001. PG&E acknowledged receipt of a DWR email dated March 30, 2001 from DWR to PG&E, indicating that DWR had requested a breakdown of PG&E's monthly 2001 sales (January through December). PG&E also attached an e-mail dated March 30, 2001 from PG&E confirming transmittal of PG&E's "standard test year 2001 sales forecast" to Navigant, (DWR's consultant).

### **Discussion**

It is concluded that evidentiary hearings are warranted related to the limited scope of factual disputes as to the nature and timing of load data provided by PG&E to DWR, as raised by CMUA. While denying that it provided its entire August 2000 Bypass Report to DWR earlier than June 2001, PG&E appears to concede at least one-year's worth of load data incorporating the August 2000 Bypass Report was provided to DWR no later than the end of

March 2001. There is still a factual dispute over whether two additional years' worth of forecast data (for 2002-03) were provided to DWR, and thus whether the associated municipal bypassed or transferred load incorporated in such data, was known by DWR at the time it made its power purchases. Although DWR and PG&E disagree as to when and how much forecast data was supplied to DWR, both the one-year and three year forecast apparently incorporated 2000 Bypass Report data (which apparently included some departing municipal load assumptions). The fact that DWR allegedly received load data from PG&E containing MDL assumptions by March 31, 2001 (and possibly earlier), however, appears relevant given the timing of DWR procurement.

PG&E argues that even if the "new facts" concerning the Bypass Report were proven to be true and had not been known by the Commission at the time D.03-07-028 was issued, such facts are not inconsistent with the decision. Although the Bypass Report identified MDL, PG&E argues that this involved only "transferred load" not loss of "new load." As such, PG&E claims there would be no effect on the "new load" exemption, and all new load within its service territory would be served by PG&E and thus still subject to a CRS. CMUA, however, challenges PG&E's claim that none of the "transferred load" involved loss of "new load," arguing that the affected geographic areas that are annexed will no longer be served at all by PG&E, and that all "new load" in such areas will be served by the municipal utility.

There remains an unresolved factual dispute as to whether any of the so-called "transferred load" incorporated in the DWR forecasts has an effect on "new load" associated with areas within which annexed load was transferred. Moreover, even assuming that "transferred load" does not affect the "*new* load" exemption authorized in D.03-07-028, "transferred load" still has potential

relevance with respect to the CRS obligation for *existing* utility load as of February 1, 2001 that departs to municipalities or irrigation districts. DWR assumptions with respect to “transferred load” could have a bearing on the total level of megawatt (MW) load as of February 1, 2001 for which power supplies were procured by DWR. If data from the Bypass Report was supplied to DWR as early as March 31, 2001, identifying “transferred load” that *was* expected to depart, then DWR arguably could have reduced procurement requirements accordingly. If so, the issue arises as to whether D.03-07-028 should be modified to adjust the MDL obligation for CRS to reflect transferred municipal load for which DWR did not procure power.

To the extent that it is determined that the “transferred load” does not strictly relate to the rehearing phase (which addresses “new load” issues), but only to transfer of existing utility load as of February 1, 2001, its disposition remains relevant within the context of CMUA’s Petition for Modification. Because of their interrelated nature, the Petition for Modification shall be considered at the same time with rehearing issues and it is more efficient and logical to resolve both matters in a single decision.

As part of its Petition for Modification, CMUA seeks to set aside submission and reopen the proceeding to receive additional evidence pursuant to Rule 84, or take official notice of, PG&E’s Bypass Report and associated materials. CMUA argues that in view of new admissions by PG&E, modification of D.03-07-028 is warranted because such admissions contradict PG&E’s earlier statements. As PG&E points out, Rule 84, setting aside submission and reopening proceedings, applies only during the period from the conclusion of hearings up to the issuance of a decision. Since the Commission has already issued D.03-07-028, Rule 84 does not apply here.

Nonetheless, while the request to set aside submission is not applicable under Rule 84, the Commission can still consider the Bypass Report in the context of the rehearing phase of this proceeding, and receive it into evidence in that context. Moreover, official notice of the Bypass Report and related attachments in parties' comments are permitted under Rule 73. These materials are already contained as attachments to the parties' filed pleadings, and thus constitute a part of the record.

CMUA claims that the Bypass Report incorporates an expected loss of load totaling about 260 MW assumed to have departed over the full 10-year forecast period. Since either one-year or three-year forecasts cover only part of the 10-year period in the Bypass Report, the question remains as to how much of the 260 MW was captured by either of these shorter forecast periods. It is also unclear as to the applicable year-by-year "transferred load" amounts in MW capacity incorporated in the 2000 Bypass Report. Thus, depending on the Commission's determination on the issues, the factual record may need to be clarified at this point. Thus, the parties should be prepared to address this issue during the evidentiary hearing.

In summary, the issues that shall be the subject of further evidentiary hearings are as follows:

- a. How many years' worth of forecast data were provided in the initial load forecast that PG&E delivered to DWR (i.e., a three-year forecast or a one-year forecast), and when was the forecast data first delivered to DWR?
- b. What was the specific amount of "transferred load" associated with bypass to irrigation districts and municipalization (both year-by-year and cumulatively) that PG&E incorporated from its Bypass Report into the initial load forecast provided to DWR?

- c. How does the “transferred load” impact the amount of power that DWR procured for (1) existing investor-owned utility (IOU) customers as of February 1, 2001 that subsequently become part of MDL and (2) new load, if any, added by municipalities or irrigation districts after February 1, 2001 that were in areas covered by the “transferred load” forecasts?
- d. To the extent that DWR performed independent calculations to extrapolate additional years of forecast data beyond those provided by PG&E, was any data relating to municipal load bypass incorporated in those independent calculations, either implicitly or explicitly?
- e. Do the currently adopted requirements for MDL CRS obligations appropriately take into account the effects of PG&E “transferred load” incorporated into forecasts utilized by DWR in making power procurement decisions? If not, what specific exclusions or adjustments to the MDL CRS obligation need to be adopted in order to recognize the effects PG&E’s “transferred load”?

Evidentiary hearings are hereby scheduled for September 8, 2004 on these limited and specific factual disputes. PG&E and DWR shall each produce a witness to testify under oath concerning their assertions set forth in their previously filed pleadings as to the load forecast submissions that were provided to DWR between January 1, 2001, and June 30, 2001, and the extent to which such submissions contained assumptions concerning MDL. The DWR witness should be prepared to answer questions concerning *what* data was provided by PG&E in the forecast versus what was extrapolated/inferred by DWR with respect to MDL.

Since the positions of DWR and PG&E on these issues are already set forth in their previously filed pleadings relating to the rehearing and Petition for Modification, no additional written testimony on substantive issues is needed.



The witnesses' oral testimony shall be confined to the factual representations contained in the previously filed written pleadings and the factual issues enumerated above. The only additional written material required is a brief statement of qualifications for each witness. The statement of witness qualifications shall be served on parties by August 23, 2004.

Witnesses shall be limited to those of PG&E and DWR. No other witnesses will be scheduled to appear. To the extent that any party seeks to cross-examine either PG&E or DWR, that party shall provide notice to ALJ Pulsifer by e-mail no later than August 31, 2004, together with the expected length of the cross examination per witness. Given the limited time available, parties should coordinate with each other to avoid duplicative cross-examination. A subsequent ruling, setting forth the order of cross-examination shall be issued following receipt of parties' estimates.

In the October 20, 2003 ALJ Ruling, parties were asked if they believed that evidentiary hearings were necessary, to indicate and identify what material facts in dispute require such hearings. No party has identified factual disputes warranting evidentiary hearings with respect to SCE or San Diego Gas & Electric Company (SDG&E) forecast data provided to DWR. Although CMUA stated in its February 17, 2004 Petition that it reserved the right to amend its petition upon receipt of information from SCE confirming the level of MDL excluded from SCE's load forecasts, CMUA has not subsequently sought to amend its petition to request modifications relating to SCE's forecasts nor has it moved to compel production of forecasts from SCE. Accordingly, in the absence of any specific request (that is supported by the identification of specific factual issues in dispute) from any party, no evidentiary hearings is necessary with respect the load forecasts provided by SCE or SDG&E.

Likewise, the scope of hearings shall not be expanded into a prudency review examining the reasonableness of the utilities' methodology for developing their forecasts and assumptions with respect to MDL. The prudency of utility forecasts was not within the scope of D.03-07-028, and the rehearing order did not expand the scope to consider this as a new issue.

The scope of the evidentiary hearings shall also not be expanded to address specific issues concerning eligibility criteria for granting CRS exceptions to existing POUs. Many parties have filed opening and reply comments on this issue on August 15 and August 29, 2003 respectively. These written pleadings form a sufficient basis to resolve this issue. Only one party, the South San Joaquin Irrigation District (SSJID), generally requests evidentiary hearings or workshops to develop a record of the efforts various publicly owned utilities have expended toward implementation of retail service and to refine criteria based on development milestones. However, SSJID does not set forth specific disputed material facts for which an evidentiary hearing is necessary or otherwise explain why these issues cannot be addressed by comments.

**IT IS RULED** that:

1. Because of their interrelated nature, the issues relating to: (1) eligibility criteria for granting Cost Responsibility Surcharge exceptions to existing publicly owned utilities; (2) the limited rehearing of Decision (D.) 03-07-028; and (3) the Petition to Modify D.03-07-028 should be addressed on a concurrent basis.
2. Evidentiary hearings are hereby scheduled to resolve relevant disputed factual issues relating to the limited rehearing of D.03-07-028 and Petition to Modify D.03-07-028, as specifically set forth above.

3. The evidentiary hearing shall be held on September 8, 2004, starting at 9:30 a.m. in the Commission's courtroom at 505 Van Ness Avenue, San Francisco, California.

4. Pacific Gas and Electric Company's (PG&E) August 2000 Bypass Report is received into the record, together with the related data requests/responses and copies of e-mail transmissions as attached to the comments of parties filed in reference to the Rehearing phase and the California Municipal Utilities Association Petition to Modify D.03-07-028.

5. PG&E and Department of Water Resources (DWR) hereby each directed to produce a witness that can testify under oath concerning the details of what specific load forecast data was provided to DWR during the first six months of 2001, and year-by-year quantification of the extent to which any such forecast data provided contained assumptions concerning municipal departing load, including "transferred load."

6. The witnesses oral testimony shall be confined to factual representations contained in the written pleadings that have previously been submitted, and the factual issues enumerated in the body of this ruling.

7. A statement of witness qualifications shall be served on parties by August 23, 2004.

8. To the extent that any party seeks to conduct cross examination of either PG&E or DWR, that party shall provide notice to Administrative Law Judge Pulsifer by email no later than August 31, 2001, together with the expected length of the cross examination per witness.

9. A copy of this ruling shall be served on parties in Application 04-07-032 for informational purposes

Dated August 10, 2004 in San Francisco, California.

/s/ THOMAS R. PULSIFER  
Thomas R. Pulsifer  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Municipal Departing Load Issues on all parties of record in this proceeding or their attorneys of record.

Dated August 10, 2004, at San Francisco, California.

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Janet V. Alviar

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

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